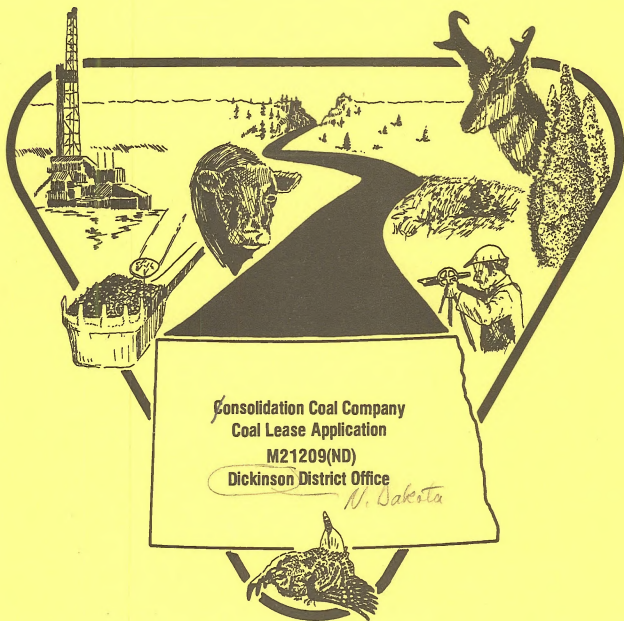




# LAND USE ANALYSIS

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LAND USE ANALYSIS/TECHNICAL EXAMINATION/ENVIRONMENTAL ASSESSMENT RECORD

CONSOLIDATION COAL COMPANY LEASE APPLICATION M-21209 (ND)

GLENHAROLD MINE

MAY 1979

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# Introduction



## INTRODUCTION

The Bureau of Land Management, U.S. Department of Interior, is the federal agency responsible for the management of the federal coal reserves in North Dakota and other states. As the managing agency, the Bureau of Land Management (BLM) pursues the coal development objectives established by the Executive, Congress, and Secretary of Interior. Through laws, policies, and directives, the BLM is pursuing a program that will make coal available to help meet the energy needs of the nation.

At present the BLM is being constrained from doing major coal leasing. This has resulted from the Secretary of Interior's decision to reassess the Department of Interior's coal leasing procedures and a Federal Court Order that has required BLM to cease leasing activities until a new Coal Programmatic Environmental Impact Statement is prepared and the Secretary reviews the leasing procedures in light of the findings of the impact statement. Both the Secretary and the Court, however, recognize the need for providing federal coal to maintain existing operations, to allow companies to meet contractual commitments, and to avoid bypass of federal coal. To provide for these "short term" needs, some exceptions to the delay were made. Standards for short term leasing were set out by the Court which were modifications of criteria which the Secretary had earlier developed. The Department of Interior, through the BLM, is attempting to respond to critical industry needs and bypass situations where individual coal leasing actions conform with the Court directed criteria.

The coal resources within the operational area of the Glenharold Mine (Consolidation Coal Company) are under multiple ownership; private, state and federal. In order to develop and maintain an efficient and stable mining operation, Consolidation Coal Company must acquire coal from all owners. The federal coal within the mine's operating area represents a significant portion of the total mineable reserves and is highly needed by Consolidation to complement and sustain their operation.

Consolidation has made several efforts to acquire all or portions of the federal coal in the Glenharold operating area; but due to a federal coal leasing moratorium in 1971, a federal court injunction in September 1977, and what the company felt to be too stringent a set of stipulations attached to a proposed 1974 lease, Consolidation has not been able to obtain the federal coal needed. The company does have a minor amount of federal coal through some earlier (premoratorium) coal leases.

An amended court order of June 1978 made it possible for the BLM to issue coal leases under the situation where federal coal would be bypassed within a short time period by ongoing mining operations. Since this situation exists at the Glenharold Mine, Consolidation Coal Company filed application to lease the federal coal that met the bypass criteria spelled out in the amended court order. This application amounted to 1,863 acres. Of this acreage, 1,588 acres were determined by U.S. Geological Survey and BLM to meet the bypass criteria. The BLM at the recommendation of U.S. Geological Survey added an additional 80 acres for a total of 1,668 acres. In order to avoid the loss of federal coal, the Department of Interior through BLM elected to act on Consolidation's application.

Since the federal coal (1,668 acres) is under private surface and is widely dispersed, the BLM opted to do a land use analysis instead of a comprehensive land use plan to meet planning requirements. Authority to do a land use analysis is provided for in the Federal Coal Leasing Amendment Act of 1975 (Sec. 3-(3) (A) (i). This Act provides that where the Department of Interior finds the situations where there is non-federal surface or where there is insufficient federal coal resources to justify the cost of a comprehensive land use plan, lease sales may be held if the state has prepared a land use plan or if the Interior (BLM) prepares a "land use analysis." The major analytical document of the land use analysis is a technical examination/environmental assessment record (TE/EAR). A "technical examination" is the analysis made on mineral disposal actions. The "environmental assessment" is the analysis of impacts of a federal proposed action on the physical, social, and

economic environment. The two analyses are so similar in content that they were merged and recorded in one document.

The technical examination/environmental assessment that is being used with this Land Use Analysis was initiated as a site specific Environmental Impact Statement (EIS) on the Glenharold Mine. This EIS was associated with the West-Central North Dakota Regional Environmental Impact Study on Energy Development. The regional study and the Glenharold EIS were accomplished through a joint effort between the BLM and the State of North Dakota. The regional study was finalized in October 1978, but finalization of the Glenharold EIS was indefinitely postponed. However, in order to meet the assessment requirements of the bypass lease application, it was mutually agreed upon by BLM and the State of North Dakota to complete the Glenharold EIS as a technical examination/environmental assessment record.

It must be recognized that even though there was joint contribution to and participation in the Glenharold TE/EAR that the decisions arrived at through its use on the Glenharold bypass lease application are those of the Secretary of Interior, not the State of North Dakota. The Governor of North Dakota will be conferred with before a final leasing decision is made, but the decision is solely the responsibility of the Secretary.

The total Glenharold Land Use Analysis is being accomplished in two phases, with a document prepared for each phase. The first phase primarily consists of the analytical processes and the initial recommendations. The document of which this introductory material is a part is the recordation of the first phase. The analyses and initial recommendations are presented to the public for review and comment. Phase two (decision statement) is an analysis of public comment, incorporation of comments into the documents, and development of the final recommendations of the BLM to be forwarded to the Secretary of Interior. The Secretary, after conferring with the Governor of North Dakota, will make the leasing or nonleasing decision.

The total documentation program is as follows:

Phase I (Analysis and Initial Recommendations)

1. Introduction
2. Technical Examination/Environmental Assessment Record
3. Application of Unsuitability Criteria
4. Resource Trade-Offs
5. Surface Owner Views
6. Relationship to State and Local Planning
7. Proposed Special Stipulations
8. Initial Recommendations and Rationale

Phase II (Decision Statement)

1. Purpose of Decision Statement
2. Public Review Comments and Analysis
3. Final Recommendation and Rationale
4. Final Special Stipulations
5. Environmental Impact Statement Declaration

As previously stated, this document is the recordation of Phase I. The public is invited and urged to review and comment on any or all portions of it. A 30 day comment period will be allowed. The Phase II Decision Document will be, subsequently, developed and made available to the general public.

# Technical Examination/ Environmental Assessment Record



TECHNICAL EXAMINATION/ENVIRONMENTAL ASSESSMENT RECORD

(TE/EAR)

The TE/EAR for this land use analysis was prepared under a separate cover entitled Technical Examination/Environmental Assessment - Glenharold Mine.

The TE/EAR is a part of this land use analysis and is found in the other pocket of the jacket of which this document is a part. The State of North Dakota was a partner with the Bureau of Land Management in preparing the TE/EAR.

The TE/EAR, being under separate cover, can be used as an analytical document by the State of North Dakota without it being associated with the land use analysis that addresses a proposed federal action.



## Application of Unsuitability Criteria



## APPLICATION OF UNSUITABILITY CRITERIA

### General Application Procedures

Section 522 (b) of the Surface Mining Control and Reclamation Act of 1977 requires that the Secretary of Interior conduct a review of the federal lands to determine whether there are areas on federal lands which are unsuitable for all or certain types of surface coal mining operations. In pursuit of this mandate the Secretary has had developed within the Department of Interior a draft list of 24 unsuitability criteria which are to be applied to federal lands where leasing of federal coal may be proposed.

A list of the draft unsuitability criteria is located in Appendix A at the end of this section. Each criterion describes a condition or conditions that may cause an area of federal land to be designated as unsuitable for surface coal mining. Most of the criteria, however, have some factors described which may except the area from being designated as unsuitable. These "exceptions" generally are allowances for applying practices for the mitigation of impacts on the resources addressed by each criterion. Application of the exceptions by the land manager is discretionary.

Following is an abbreviated step by step discussion of unsuitability application procedures:

#### Step 1

Areas meeting the conditions spelled out by each criterion over a qualifying coal deposit are delineated on a composite map. These are initial unsuitable areas.

#### Step 2

Every area that has an initial unsuitable designation has the appropriate exceptions criteria applied. The unsuitable designation may be dropped

where an exception action can be taken. The land manager has the discretion to drop or not drop the unsuitable designation where an exception fits. If an exception cannot be appropriately applied then the area remains designated as unsuitable for mining.

In many cases the decision on unsuitability may be deferred. An example is the designation of buffer zones along county roads. The application of exceptions is probably more appropriately done when a mining company has a definite mining proposal in an area containing a county road. At that time the mining company can go to the county authorities to request temporary relocation of the road. If the authorities decide that relocation is not feasible, then a buffer zone of 100 feet on either side of the road becomes an area unsuitable for surface mining.

#### Step 3

The areas that carry through as unsuitable are portrayed on a composite map.

#### Step 4

A document is prepared that discusses the application of unsuitability criteria. This includes initial designation, use of exceptions and final designations.

#### Step 5

A document is prepared on the impact of unsuitability designation. This includes 1) the potential coal resources involved; 2) the demand for such resources; and 3) the impact of such designation on the environment, the economy and the supply of coal.

#### Step 6

As a part of the normal public participation phase of the BIM land use planning process, the unsuitability maps and documents are presented to the public for comment.

#### Step 7

Unsuitable area designations are finalized after analysis of public comment and, where appropriate, adjustments have been made. Final designations will be a part of the decision document of the land use plan. The decision document will be made available to the public. People's comments and BLM's responses to them will also be a part of the document.

Once the planning recommendations are presented, any person whose interests may be adversely affected by the recommendations may request a public hearing on the plan prior to its adoption.

APPLICATION OF UNSUITABILITY CRITERIA  
ON FEDERAL COAL IN THE BYPASS APPLICATION AREA AT THE GLENHAROLD MINE

All 24 unsuitability criteria were addressed when doing the land use analysis on the Glenharold bypass application. They were only applied to the areas of federal coal included in the bypass application. The federal coal areas have conditions or situations that fitted only four criteria. These are

Criterion 3 - Buffer Zones Along Rights-of-Way and Adjacent  
to Communities and Buildings

Criterion 5 - Scenic Areas

Criterion 17 - Floodplains

Criterion 22 - Prime Farmlands

See the list of Unsuitability Criteria in Appendix A of this section for the definition of each of the above mentioned criteria. See the Initial Unsuitable - Without Exceptions Applied Map (page 15) for the delineation of these areas.

A discussion of the application each unsuitability criterion follows:

Criterion 1. Federal Land Systems

There are no federal land systems within the subject coal area.  
Therefore, no area was excluded under this criterion.

Criterion 2. Rights-of-Way and Easements

There are no federal lands within the bypass area with rights-of-way or easements. Therefore, no area was excluded under this criterion.

Criterion 3. Buffer Zones Along Rights-of-Way and Adjacent to Communities and Buildings

There are roads and dwellings in the subject area that meet the conditions of this criterion. These are delineated on the Initial Unsuitable Areas Map.

Criterion 4. Wilderness Study Areas

There are no federal lands designated as wilderness or federal lands under review, and no federal lands have wilderness characteristics. Therefore, no areas have been excluded under this criterion.

Criterion 5. Scenic Areas

There are several acres of Class II Visual Resource Management Areas in Section 24, T144N, R85W. These are depicted on the Initial Unsuitable Areas Map. (See the definition on Visual Resource Management Classes in Appendix B of this section).

Criterion 6. Lands Used for Scientific Studies

There are no lands used for scientific studies within the bypass area. Therefore, no areas were excluded under this criterion.

Criterion 7. Historic Land and Sites

There are no sites which can be considered unsuitable for leasing based on this criterion.

Criterion 8. Natural Areas

There are no areas or sites on or presently eligible for inclusion on the National Register of Natural Landmarks in the bypass area. Therefore, no areas were excluded under this criterion.

Criterion 9. Federally Listed Endangered Species

There are no threatened/endangered plant and animal species or habitat which may be adversely affected through the leasing and subsequent mining of federal coal reserves in these areas.

Criterion 10. State Listed Endangered Species

No state listed endangered species and/or habitats will be affected by the leasing of federal reserves. The state does not list any plants as endangered, and the black-footed ferret is the only animal listed as endangered, and no habitat (prairie dog town) for black-footed ferrets is known to occur on the proposed coal lease area. Therefore, no areas are excluded under this criterion.

Criterion 11. Bald and Golden Eagle Nests

There are no known Bald Eagle or Golden Eagle nests within 1/4 mile of the proposed coal lease area. Therefore, no areas are excluded under this criterion.

Criterion 12. Bald and Golden Eagle Roost and Concentration Areas

There are no known Bald Eagle or Golden Eagle concentration areas in the proposed coal lease area. Therefore, no areas are excluded under this criterion.

Criterion 13. Falcon Cliff Nesting Sites

There are no known cliff nesting sites or active nests within 1/4 mile of the proposed coal lease area. Therefore, no areas have been excluded under this criterion.

Criterion 14. Migratory Birds

There are no areas to be considered unsuitable at this time.

Criterion 15. State Resident Fish and Wildlife

The State of North Dakota does not have a list of state high interest species and, therefore, has not identified critical habitat for these species.

Criterion 16. Wetlands

There are no wetlands over the bypass federal coal.

Criterion 17. Floodplains

Every stream channel located over the coal area has a floodplain which is associated with the 100 year recurrence interval flow. These are shown on the Initial Unsuitable Area Map.

Criterion 18. Municipal Watersheds

There are no municipal watersheds located in the analysis area. Therefore, no areas were excluded under this criterion.

Criterion 19. National Resource Waters

There are no national resource waters located on or within 1/4 mile of the bypass areas. Therefore, no areas were excluded under this criterion.

Criterion 20. State Land Unsuitable

None have been identified.

Criterion 21. State Proposed Criteria

None have been identified.

Criterion 22. Prime Farmland

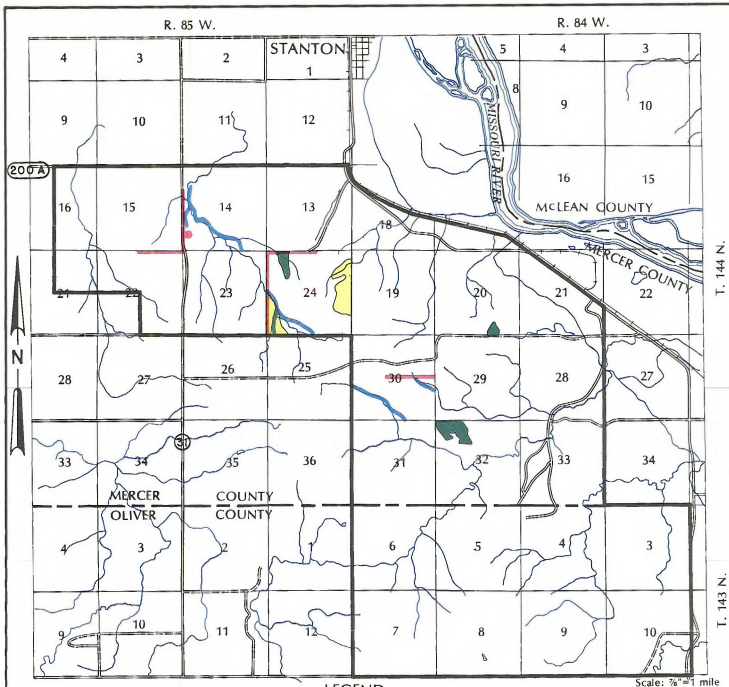
There are prime farmlands over a small area of the subject coal area. They are depicted on the Initial Unsuitable Area Map.

Criterion 23. Alluvial Valley Floors

There are no alluvial valley floors over the subject coal. Mining of the subject coal will not impact the alluvial valley floor associated with the nearby Missouri River.

Criterion 24. Reclaimability

No specific tracts of federal coal are considered unsuitable for coal mining due to reclaimability considerations.



# LEGEND

- Improved Roads
- Other Roads
- +— Railroads
- - - County Boundary
- Glenharold Mine Project Area Boundary
- ~ Stream

- Criterion 5 — Scenic Areas
- Criterion 22 — Prime Farmlands
- Criterion 17 — Floodplains
- Criterion 3 — Buffer Zones (Roads)
- Criterion 3 — Buffer Zones (Dwelling)

SOURCE: BLM, 1977

## INITIAL UNSUITABLE AREAS — WITHOUT EXCEPTIONS APPLIED



## APPLICATION OF EXCEPTIONS TO INITIAL UNSUITABLE AREAS

The philosophy used in applying exceptions in designation the final unsuitable areas in this land use plan centers on conservation and economic efficiency. It is felt that once the major decision is made to develop the coal in a particular area the development should be done in a manner that will achieve greatest economic efficiency in coal recovery, highest utilization of the coal resource (conservation) and minimal environmental damage. This goal can be achieved through the application of mitigating measures (exceptions) where allowable, acceptable, and feasible.

### Criterion 3. Buffer Zones

It is recommended that the application of the exception and the final decision on unsuitability be deferred until mining plan approval time.

It is felt that the most appropriate time to address the buffer zone issue is when a mining company is developing a mining and reclamation plan. If roads and occupancies are involved, the mining company can then negotiate with the proper authorities and property owners for relocating roads or mining closer to buildings.

A stipulation will be put into the coal lease mandating that appropriate buffer zones are unsuitable for mining unless permission from the proper authority or property owner is obtained.

### Criterion 5. Scenic Areas

Through proper reclamation practices the scenic quality of the designated scenic areas can be restored. Therefore, it is recommended that the exception to allow mining where scenic values can be restored be adopted and that the identified Class II areas not be designated unsuitable.

Criterion 17. Floodplains

Since the coal is a part of the subsurface geology of all of these floodplain areas, the only alternative to development is to not mine the coal, subsequently not utilizing the coal resource. Potential for harm to people or property along with natural and beneficial values of all of these floodplains can be minimized through the use of diversion channels constructed according to the procedures specified in the Surface Mining Control and Reclamation Act. These described conditions allow for the application of both exceptions to this criterion. Therefore, it is recommended that the floodplains not be designated unsuitable for surface mining.

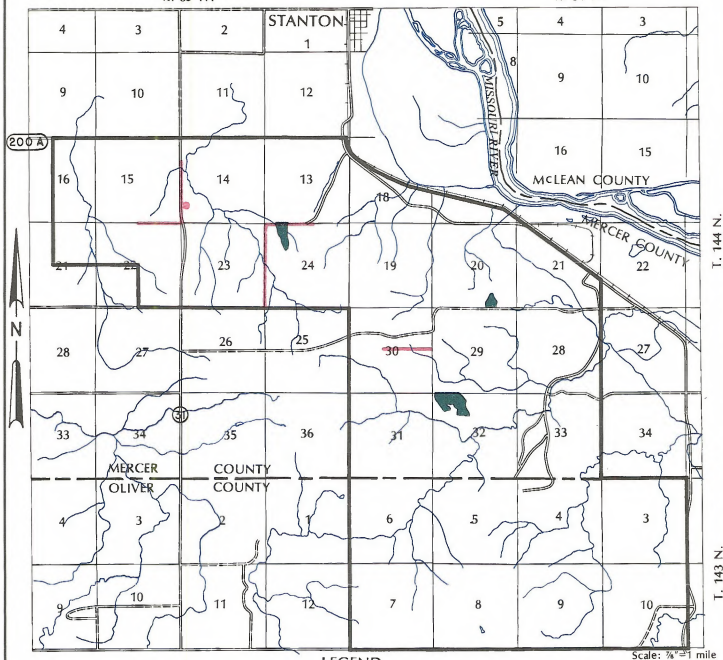
Criterion 22. Prime Farmlands

It is recommended that application of the exceptions and the decision on unsuitability be deferred until the time when approval of a mining and reclamation plan is considered. At that time, the applicant must be able to demonstrate, through scientific studies, that crop yields equivalent to premining crop yields could be obtained and that an operator or potential operator could meet the soil reconstruction standards in Section 515(b)(7) of the Surface Mining Control and Reclamation Act (SMCRA) and OSM's permanent regulations.

SMCRA allows for this type of demonstration, and it is felt that the burden of proof should be placed on the mining industry. Putting the burden of proof on industry gives them the opportunity to develop and demonstrate ways to restore prime farmland. Should such demonstration not be adequate (according to OSM), the prime farmlands would then be considered unsuitable for surface mining. An appropriate stipulation to the lease will assure that the above procedure be adhered to.

R. 85 W.

R. 84 W.



## LEGEND

— Improved Roads

--- Other Roads

+ Railroads

- - - County Boundary

— Glenharold Mine Project Area Boundary

~ Stream

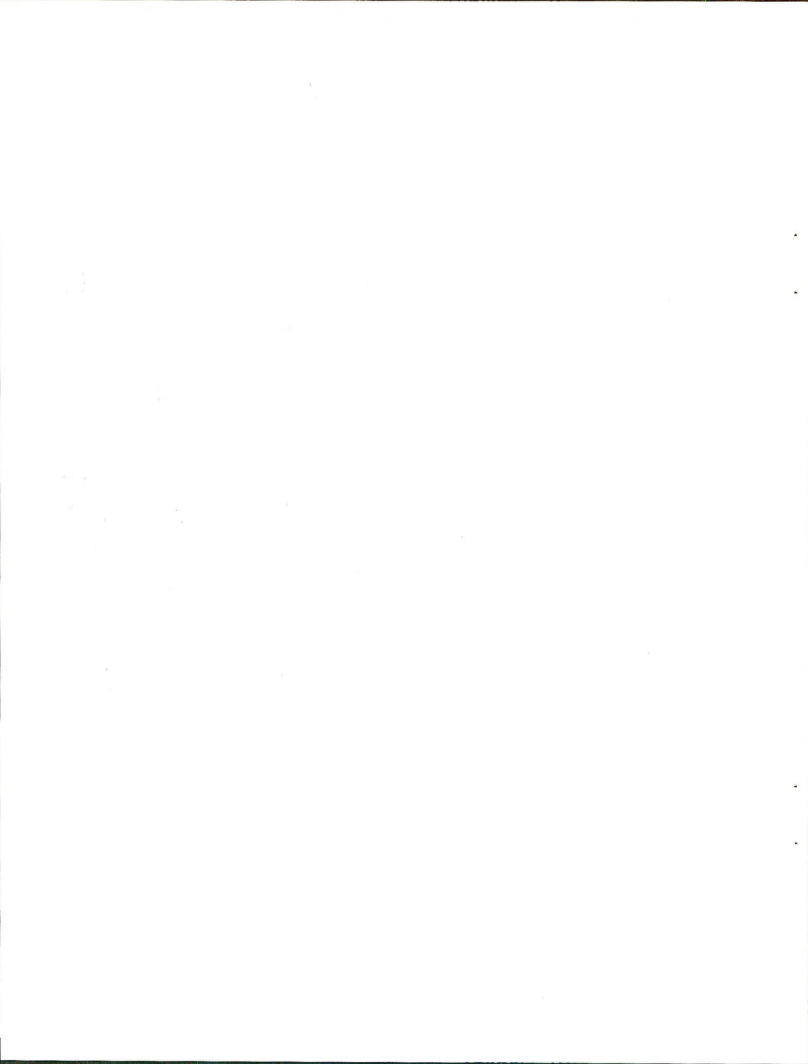
■ Criterion 22 — Prime Farmlands

— Criterion 3 — Buffer Zones (Roads)

● Criterion 3 — Buffer Zones (Dwelling)

SOURCE: BLM, 1977

UNSUITABILITY DECISION DEFERRED



## Appendix A



## APPENDIX A

### UNSUITABILITY CRITERIA

#### Unsuitability Criteria Selected by the Under Secretary on September 28 and as Amended

##### General Exception

Federal lands with coal which will be mined by underground mining methods will not be considered unsuitable for coal mining where the mining will result in no surface effects. Where underground mining will produce surface effects on federal lands to which a criterion applies, those lands will be considered unsuitable unless the conditions exist to permit an exception. Surface effects include surface occupancy, subsidence, fire, and other environmental impacts of underground mining which are manifested on the surface.

#### 1. Federal Land Systems

Criterion: All federal lands included in the following land systems or categories and an appropriate buffer zone, if necessary, as determined by the land management agency, shall be considered unsuitable for coal mining: National Park System, National Wildlife Refuge System, National Systems of Trails, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Recreation Areas, and other federally purchased recreation lands, Custer National Forest, and federal lands in incorporated cities, towns, and villages. All federal lands which are recommended for inclusion in such systems or categories by the Administration in legislative proposals submitted to the Congress or which are required by statute to be studied for inclusion in such systems or categories shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued for underground coal mining within the Custer National Forest with the consent of the Department of Agriculture.

2. Rights-of-Way and Easements

Criterion: Federal lands that are within rights-of-way or easements or within surface leases for residential, commercial, industrial, public purposes, or for agricultural crop production on federally owned surface shall be considered unsuitable for coal mining.

Exceptions: A lease may include such areas if the land management agency determines that:

- (a) Coal development (e.g., underground mining) will not interfere with the purpose of the right-of-way or easement, or
- (b) The right-of-way or easement was granted for mining purposes, or
- (c) The right-of-way or easement was issued for a purpose for which it is not being used, or
- (d) The parties involved in the right-of-way or easement agree to leasing, or
- (e) It is impractical to exclude such areas due to the location of coal and method of mining and such areas can be protected through use of appropriate stipulations.

3. Buffer Zones Along Right-of-Way and Adjacent to Communities and Buildings

Criterion: Federal lands affected by Section 522(e) of the Surface Mining Control and Reclamation Act shall be considered unsuitable for coal mining. This includes lands within 100 feet outside of the right-of-way of a public highway or within 100 feet of a cemetery, or within 300 feet of a public building, school, church, community or institutional building or public park or within 300 feet of an occupied dwelling.

Exception: A lease may include mine access roads or haulage roads that join the right-of-way for a public road. Additionally, the Surface Mining Regulatory Authority may issue a permit to have public roads relocated. Finally, owners of occupied buildings may give permission to mine near the buildings.

4. Wilderness Study Areas

Criterion: Federal lands designated as wilderness study areas shall be considered unsuitable for coal mining while under review by the Administration and the Congress for possible wilderness designation. For any federal land which is to be leased or mined prior to completion of the wilderness inventory by the land management agency, the environmental impact statement (or analysis) of the lease sale or mine plan must consider whether the land possesses the characteristics of a wilderness study area. If the finding is affirmative, the land shall be considered unsuitable for coal mining.

Exception: Issuance of noncompetitive coal leases and mining on leases may proceed if authorized by the Wilderness Act and the Federal Land Policy and Management Act of 1976.

5. Scenic Areas

Criterion: Scenic federal lands designated by visual resource management analysis as Class I or II (areas of outstanding scenic quality and/or high visual sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable for coal mining.

Exception: A lease may be issued if the land management agency determines that coal mining will not significantly diminish or adversely affect the scenic quality of the designated area.

6. Land Used For Scientific Studies

Criterion: Federal lands under permit by the land management agency, and being used for scientific studies involving food and fiber production, natural resources or technology demonstrations and experiments shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued:

- (a) With the concurrence of the principal scientific user or agency, or
- (b) Where the mining could be done in such a way as not to jeopardize the purpose of the study as determined by the land management agency.

7. Historic Lands and Sites

Criterion: All districts, sites, buildings, structures, and objects of historic, architectural, archeological, or cultural significance which are included in or eligible for inclusion in the National Register of Historic Places, and an appropriate buffer zone around the outside boundary of the property (to protect the inherent values of the property that made it eligible for listing in the National Register) as determined by the land management agency, in consultation with the Advisory Council on Historic Preservation or by procedures approved by the Advisory Council, shall be considered unsuitable for coal mining.

Exceptions: Leasing may be allowed if the land management agency determines:

- (a) The site, structure, or object is of regional or local significance only with the concurrence of the state, or
- (b) In consultation with the Advisory Council on Historic Preservation, the direct and indirect effects of coal mining to properties on or eligible for the National Register of Historic

Places will not result in significant adverse impacts to the site, structure, or object.

8. Natural Areas

Criterion: Federal lands designated as natural areas or as National Natural Landmarks shall be considered unsuitable for coal mining.

Exceptions: Leasing may be allowed in these areas or sites if the land management agency determines that:

- (a) The area or site is only of regional or local significance only with the concurrence of the state, or
- (b) The use of appropriate mining technology will result in no significant adverse impact to the area or site, or
- (c) The mining of the coal resource will enhance information recovery (e.g., paleontological sites).

9. Federally Listed Endangered Species

Criterion: Legally designated critical habitat for federal threatened/endangered (T/E) plant and animal species, and habitat for federal T/E species which is determined by the Fish and Wildlife Service and the land management agency to be of essential value and where the presence of T/E species has been scientifically documented, shall be considered unsuitable for coal mining.

Exception: Leasing may be allowed if, after consultation with the Fish and Wildlife Service, the land management agency determines the species habitat will not be adversely affected by coal development.

10. State Listed Endangered Species

Criterion: Habitats deemed critical or essential for plants and animal species listed by the state pursuant to state law as endangered or threatened shall be considered unsuitable for coal mining.

Exception: A lease may be issued if, after consultation with the state, the land management agency determines that the species will not be adversely affected by the coal development.

11. Bald and Golden Eagle Nests

Criterion: Bald and Golden Eagle nests that are determined to be active and a buffer zone of land in a 1/4 mile radius from the nests are areas which shall be considered unsuitable for coal mining, except that during the nonbreeding season, mining can be conducted within the buffer zone. Consideration of availability of habitat for prey species shall be included in the determination of buffer zones.

Exceptions: A lease may be issued if:

- (a) It can be conditioned in such a way, and during periods of time, that eagles will not be disturbed during breeding season, or
- (b) A permit or special approval is granted by the Fish and Wildlife Service to allow the eagle nest to be moved.

Buffer zones may be increased or decreased if the land management agency determines that the active eagle nests will not be adversely affected.

12. Bald and Golden Eagle Roost and Concentration Areas

Criterion: Bald and Golden Eagle roost and concentration areas used during migration and wintering shall be considered unsuitable for coal mining.

Exception: A lease may be issued if the land management agency determines that mining can be conducted in such a way, and during such periods of time, to ensure that eagles will not be adversely disturbed.

13. Falcon Cliff Nesting Sites

Criterion: Federal lands containing falcon cliff nesting sites with active nests and a buffer zone of federal lands 1/4 mile radius from the nest to provide needed prey shall be considered unsuitable for coal mining, except that, during the nonbreeding season, mining can be conducted within the buffer zone. Consideration of availability of habitat for prey species shall be included in the determination of buffer zones.

Exceptions: A lease may be issued if:

- (a) The land management agency determines that coal mining will not adversely impact the nesting sites during the breeding season, or
- (b) Nest sites may be moved with concurrence of the Fish and Wildlife Service.

Buffer zones may be increased or decreased if the land management agency determines the active falcon nests will not be adversely affected.

14. Migratory Birds

Criterion: Federal lands which are high priority habitat for migratory bird species of high federal interest on a regional or national basis, as determined jointly by the federal land management agency and the Fish and Wildlife Service, shall be considered unsuitable for coal mining.

Exception: A lease may be issued where the land management agency, after consultation with the Fish and Wildlife Service, determines that coal mining will not adversely impact the migratory bird habitat during periods when such habitat is used by the species.

15. State Resident Fish and Wildlife

Criterion: Federal lands which the land management agency and the state jointly agree are fish and wildlife habitat for resident species of high interest to the state and which are essential for maintaining these priority wildlife species shall be considered unsuitable for coal mining.

Such lands shall include:

- Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken.
- The most critical winter ranges for deer, antelope, and elk.
- Migration corridors for elk.

Such lands may include appropriate buffer zones as determined jointly by the land management agency and the state.

Exceptions: A lease may be issued if:

- (a) It is demonstrated that complete mitigation is possible, or
- (b) Following discussions between the state wildlife agency and the federal land management agency, the federal land management agency determines that the species being protected will not be adversely affected by the mining activity.

16. Wetlands

Criterion: Federal lands containing: (1) inland lakes, impoundments, and associated wetlands; (2) inland shallow, predominantly vegetated wetlands; or (3) riverine wetlands systems, lower perennial and upper perennial systems with flow greater than five cubic feet per second and riparian zones in a "relatively undisturbed" state that are larger than one linear mile along a riverine system, shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued where the land management agency determines that:

- (a) The use of appropriate mining or reclamation technology will not significantly affect the wetlands or will provide for complete restoration, or
- (b) The wetlands contain no significant values for ground water recharge, fish and wildlife habitat, recreation or scientific study.

17. Floodplains

Criterion: Riverine, coastal, and special floodplains (100-year recurrence interval) shall be considered unsuitable for coal mining.

Exceptions: Leasing may be allowed where the land management agency determines that:

- (a) Leasing a particular tract is the only practicable alternative, and
- (b) Potential for harm to people or property and natural and beneficial values of floodplains can be minimized through use of demonstrated and available mining and mitigation measures.

18. Municipal Watersheds

Criterion: Federal lands which have been committed by the land management agency to use as municipal watersheds shall be considered unsuitable for coal mining.

Exceptions: Leasing may be allowed where:

- (a) The land management agency determines that mining will not adversely affect the watershed to any significant degree, and
- (b) The municipality or water users concur in the issuance of the lease.

19. National Resource Waters

Criterion: Federal lands with National Resource Waters, as identified by states in their water quality management plans, and a buffer zone of federal lands 1/4 mile from the outer edge of the far banks of the water, shall be unsuitable for coal mining.

Exception: The buffer zone may be eliminated or reduced in size where the land management agency determines that it is not necessary to protect the National Resource Waters.

Unsuitability Criteria Selected by the Under Secretary on November 2

(Note: Criteria 20 and 21 were proposed prior to the September 28, 1978, decision, but the Under Secretary chose to defer a decision on those two items pending further consideration. Criteria 22 through 24 were not drafted by September 28, but were agreed to in principle by the Under Secretary on that date, subject to his review of the final wording to be developed by the Assistant Secretary - Energy and Minerals, in consultation with the Assistant Secretary - Land and Water Resources.)

20. State Lands Unsuitable

Criterion: A buffer zone of federal lands necessary to provide protection for any adjacent area designated as land unsuitable for mining by the state shall be considered unsuitable for coal mining.

Exception: The buffer zone may be modified or eliminated where the land management agency, in consultation with the state, determines that all or parts of the zone are not necessary to protect the designated area.

21. State Proposed Criteria

Criterion: Federal lands in a state to which is applicable a criterion (i) proposed by the state, and (ii) adopted by rulemaking

by the Secretary of the Interior, shall be considered unsuitable for coal mining.

Exceptions:

- (a) A lease may be issued for any area: irrespective of the applicability for the state nominated criterion, if such criterion is adopted less than 12 months prior to the publication of the draft land use plan which applies to such area, or
- (b) Where the land management agency, in consultation with the state determines that although the criterion applies, mining will not adversely affect the value which the criterion would protect.

22. Prime Farmlands

When the land management agency, with the concurrence of the Secretary of Agriculture (Soil Conservation Service), identifies federal lands having prime farmland soils, such lands shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued when:

- (a) Conditions such as soil rockiness, angle of slope or historic or other conditions leading to a negative determination under permanent regulations of the Office of Surface Mining Reclamation and Enforcement (OSM) are present; or
- (b) Scientific studies show that crop yields equivalent to premining crop yields on nonmined prime farmlands in the surrounding area under equivalent levels of management could be obtained, and that an operator or potential operator could meet the soil reconstruction standards in Section 515(b)(7) of the Surface Mining Control and Reclamation Act (SMCRA) and OSM's permanent regulations.

23. Alluvial Valley Floors

Federal lands identified by the land management agency, with the concurrence of the state in which they are located, as alluvial valley floors according to the definition and standards of the SMCRA, the regulations, final alluvial valley floor guidelines, and approved state programs, where mining would interrupt, discontinue, or preclude farming shall be considered unsuitable for coal mining. Additionally, when mining federal land outside an alluvial valley surface or underground water systems that would supply alluvial valley floors, that land shall be considered unsuitable for coal mining.

Exception: A lease may be issued where mining would not interrupt, discontinue, or preclude farming on land to which the first sentence of the criterion applies.

24. Reclaimability

As information regarding reclaimability on a local or regional basis becomes available, the land management agency shall use such information to determine if areas of federal land are reclaimable to the standards of SMCRA, the regulations, and approved state programs. Examples of information on reclaimability would be soil studies, hydrologic studies, and studies concerning revegetation. If any area is determined not to be so reclaimable, such area shall be considered unsuitable for coal mining.

Exception: A lease may be issued upon presentation of information which contains results of studies showing that reclamation is possible to the standards of the SMCRA, the regulations, and approved state programs, including state regulations.

## Appendix B



## APPENDIX B

### VISUAL RESOURCE MANAGEMENT CLASSES

The following visual resource management classes are to be used as tentative minimum management objectives for the visual management in BLM planning.

Class I - This class provides primarily for natural ecological changes only. It is applied to primitive areas, some natural areas and other similar situations where management activities are to be restricted.

Class II - Changes in any of the basic elements (form, line, color, or texture) caused by a management activity should not be evident in the characteristic landscape.

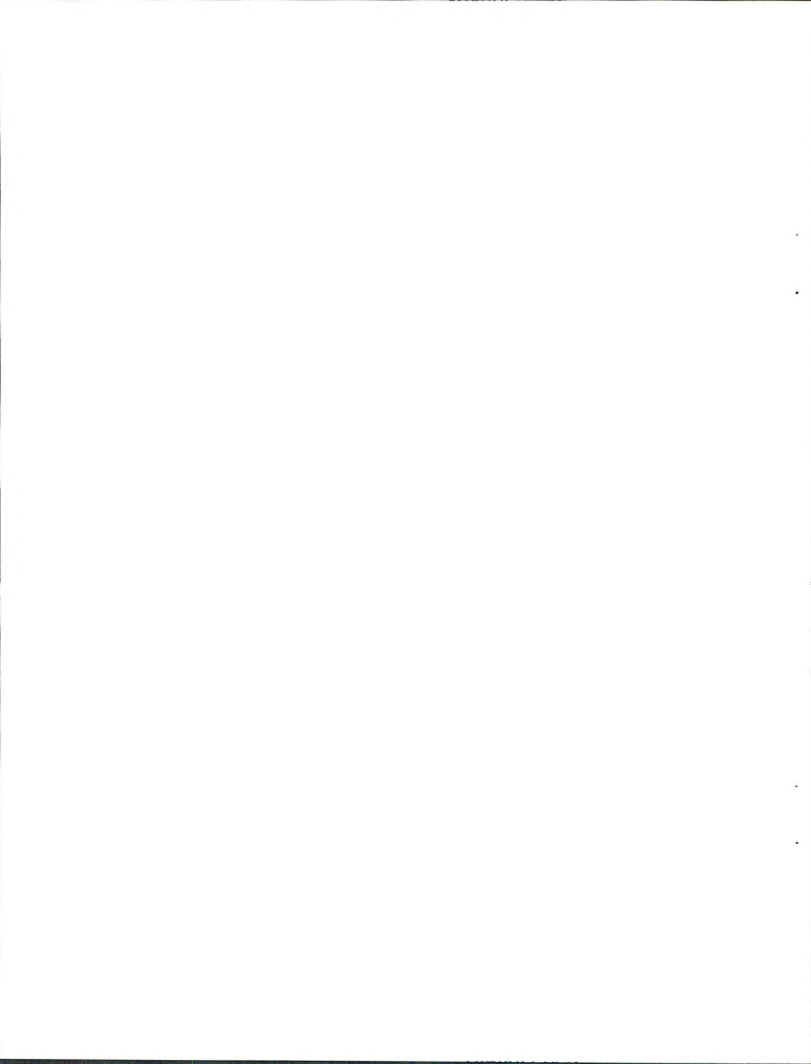
Class III - Changes in the basic elements, (form, line, color, or texture) caused by a management activity may be evident in the characteristic landscape. However, the changes should remain subordinate to the visual strength of the existing character.

Class IV - Changes may subordinate the original composition and character but must reflect what could be a natural occurrence within the characteristic landscape.

Class V - Change is needed. This class applies to areas where the naturalistic character has been disturbed to a point where rehabilitation is needed to bring it back into character with the surrounding countryside. This class would apply to areas identified in the scenery evaluation where the quality class has been reduced because of unacceptable intrusions. It should be considered an interim short term classification until one of the other objectives can be reached through rehabilitation or enhancement. The desired visual quality objective should be identified.



## Resource Trade-Offs



## RESOURCE TRADE-OFFS

The purpose of this section of the land use analysis is to present recommendations that may exclude areas from mining where it has been determined that the values of other resources exceed the value of the coal. The resources considered in the analysis for making the recommendations are those not covered under the 24 unsuitability criteria discussed in the preceding section.

The woodland ecosystems found on the lease application area are the only resources, exclusive of the 24 unsuitability criteria, that are recommended to be excluded from mining. These areas provide habitat for a large number of wildlife species and have high significant value since habitat of this type is severely limited in North Dakota.

It is felt that a temporary loss of some of the woodland ecosystems might be acceptable, however, as long as the ecosystem could be restored after mining. For this reason, mining may be allowed where the mining company can scientifically show that full restoration of individual woodland ecosystems can be achieved. Each system will have to be analyzed on a case-by-case basis. Approval for mining by appropriate authorities must be obtained before mining could occur.

A lease stipulation to assure protection of the woodland ecosystems in the lease application area is found in the Proposed Special Stipulations Section of this analysis (page 41). This stipulation was jointly developed by the BLM and the North Dakota Public Service Commission.



## Surface Owner Views



## SURFACE OWNER VIEWS

Consolidation Coal Company has acquired surface owner consent through surface lease agreements for all of the federal coal in their short term bypass lease application. At the time of the writing of this document, Consolidation has not acquired surface owner consent on the 80 acres which BLM proposed to be added to the application.

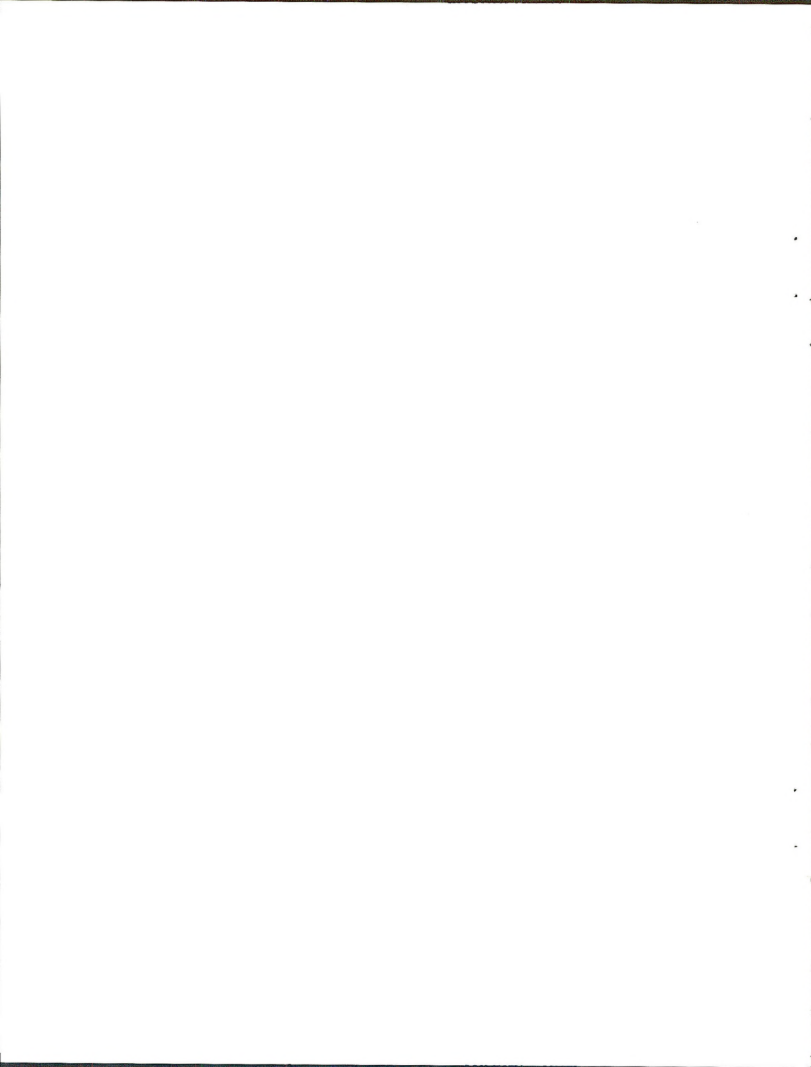
Leasing cannot occur on any parcel of federal coal under private surface without surface owner consent. And, a recent policy decision from the office of the Secretary of Interior precludes BLM from holding a lease sale without surface owner consent. Therefore, no federal coal under private surface in the Glenharold Mine area will be leased unless the surface owner has given consent.

In the consultation process, surface owners over federal coal were asked to indicate their preference for or against the leasing of federal coal under their surface. There was nearly a unanimous favorable response of those landowners over the approved bypass application coal. A few landowners failed to respond to the request for stating their preference, but there were none responding who were against leasing.

There was only a small area within the vicinity of the Glenharold Mine where landowners were adverse to mining the federal coal under their surface. Some of these lands were included within Consolidation's original bypass application but were excluded early from consideration because they did not meet the short term bypass criteria. Unless the surface owners change their minds, these coal lands will not be considered in future leasing proposals.



## Relationship to State and Local Planning



#### RELATIONSHIP TO STATE AND LOCAL PLANNING

There is neither a state nor local land use plan that includes the Glenharold Mine area. However, Mercer County has an Interim Land Use Policy in effect. This policy does not directly relate to the leasing of federal coal in the Glenharold Mine area, but relates to a working relationship with the North Dakota Public Service Commission in allowing for orderly geographic expansion of the mine. The county recognizes a need for expansion of the mine and anticipates that it will occur.

The BLM's proposal to lease coal within the operational area of the Glenharold Mine is compatible with the Mercer County Interim Land Use Policy.



## Proposed Special Stipulations



## PROPOSED SPECIAL STIPULATIONS

The purpose of this section of the land use analysis is to present the recommended special stipulations that are to be made a part of the coal lease issued in response to the short term bypass application. Special stipulations are those developed and placed in a standard lease form that direct the lessee to conduct certain operations not already prescribed by law, regulation, or standard lease terms. They are also used to clarify or make more specific already prescribed requirements.

The intent of the special stipulations recommended for this lease is to mandate to the lessee what is required as a product of mining and reclamation rather than mandate how to achieve it. This provides flexibility and allows application of practices that best fit the lessee's operation and specific situations. Procedures must be spelled out in an Operation and Reclamation Plan which must be approved by the North Dakota Public Service Commission, Office of Surface Mining, Bureau of Land Management, and U.S. Geological Survey. Many of the mitigating measures in the TE/EAR are not reflected here as proposed stipulations, because they are elsewhere covered by law or regulation or are procedural rather than product oriented.

Following are the special lease stipulations recommended for this bypass lease application:

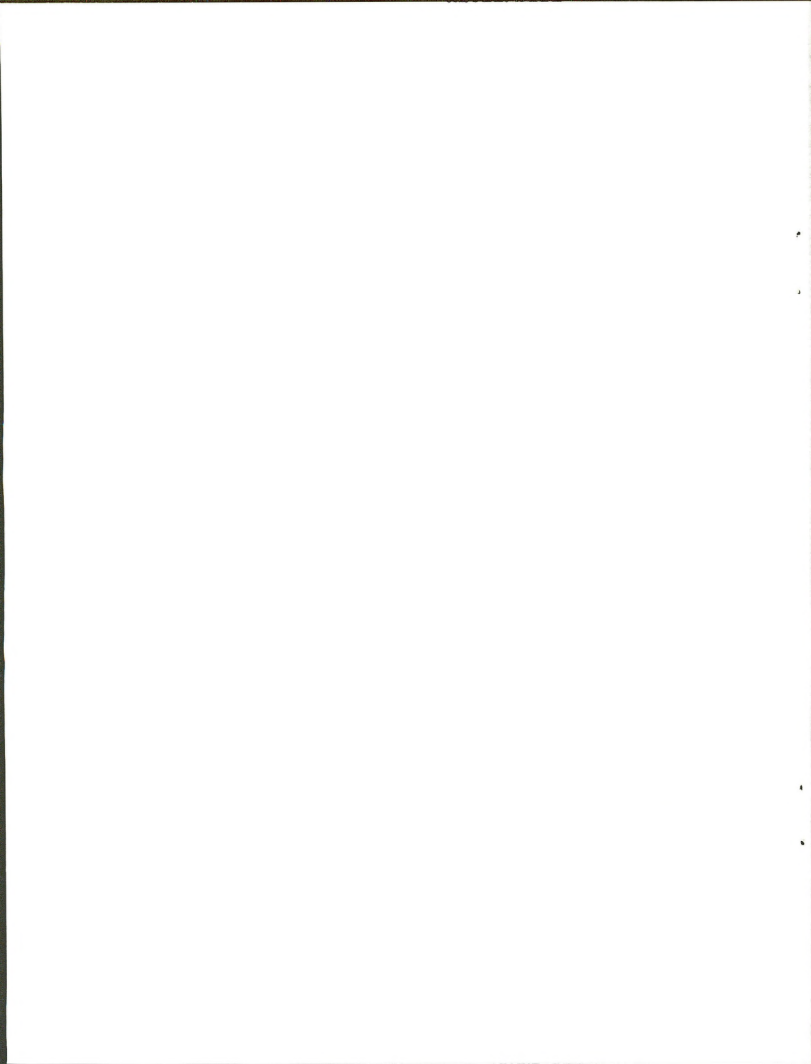
1. Reclamation shall result in the mined over lands being returned to their premining use unless otherwise excepted by the North Dakota Public Service Commission and the Office of Surface Mining.
2. There shall be neither partial nor total destruction of woodland ecosystems within this lease area either through directly mining underlying coal or through mining activities associated with the removal of adjacent coal unless all of the following can be accomplished:

- a. The lessee satisfactorily demonstrates to the North Dakota Public Service Commission and the Office of Surface Mining within the Operations and Reclamation Plan as required by Section 6 of the Mineral Leasing Act of 1920, as amended that:
    - 1) it is necessary to destroy the woodland ecosystem in order to meet development, production, resource recovery and protection, diligence, and maximum economic recovery requirements; and
    - 2) an equivalent woodland ecosystem can and will be restored as the post mining land use for those sites that will be destroyed.
  - b. Written agreement and approval to the demonstrated necessity and restoration plan be acquired from the North Dakota Public Service Commission and the Office of Surface Mining.
3. There shall be no mining or mine related activity on prime farmland unless the applicant can demonstrate in the Operation and Reclamation Plan that he can meet the soil reconstruction standards and will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining as set forth in Section 515(b)(7) of SMCRA and OSM's permanent regulations. Authorization for approval of the plan for restoration of prime farmland must be granted by the North Dakota Public Service Commission and the Office of Surface Mining.
4. No surface mining shall be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road, except:
- a. Where mine access roads or haulage roads join such right-of-way line; or

- b. Where the regulatory authorities allow the public road to be relocated or the area affected to be within 100 feet of such road, after:
  - 1) Public notice and opportunity for a public hearing; and
  - 2) Making a written finding that the interests of the affected public and landowners will be protected.
- 5. No surface mining shall be conducted within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet.



## Initial Recommendations and Rationale



#### INITIAL RECOMMENDATIONS AND RATIONALE

It is recommended that all the tracts of federal coal included in this land use analysis (see Chapter 1, TE/EAR for exact description) be offered for lease and that the special stipulations listed in the Proposed Special Stipulations Section of this analysis be made part of the lease.

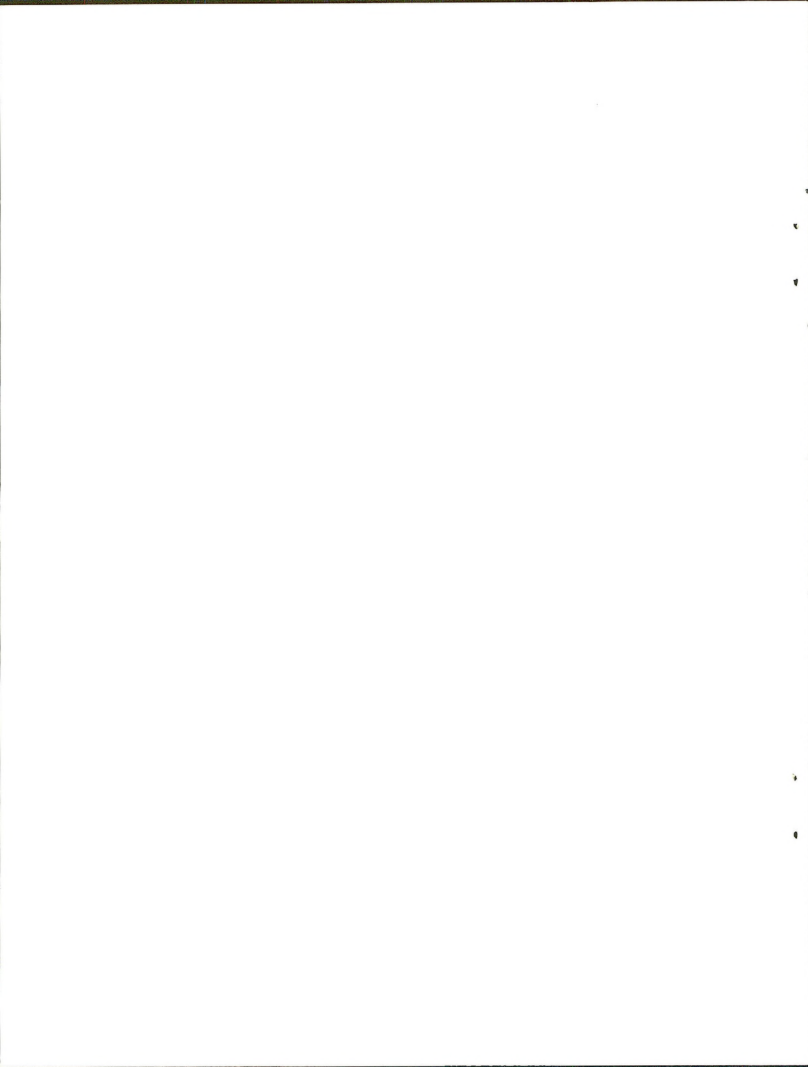
This recommendation is in line with the overall objective of the President and Congress to provide coal to help meet the energy needs of the nation, provided that it can be done in an environmentally acceptable manner. The impact assessment done as part of this land use analysis indicates that environmental damage would be minimal if mining and reclamation are done according to standards required by law, regulation, and lease terms.

Many of the specific factors which led to the recommendation are:

1. The coal needs to be leased at this time to avoid having it bypassed. If bypassed, it would essentially be lost as economic factors would prevent it from being mined in the future.
2. The short term criteria mandated by the Federal Court has been met.
3. The coal is needed for efficient mining of the area, resulting in lower mining and subsequent energy costs.
4. An existing electric generating plant is dependent upon coal in this area.
5. This coal would help meet energy needs of the State and the Nation.
6. The area has the potential for successful reclamation. Where there is doubt about restoration of some vegetative types, industry would have to demonstrate its ability to restore these areas before mining can occur. Otherwise, these areas would not be mined.

7. There would not be adverse social and economic impacts.
8. Irreversible environmental impacts would be insignificant.
9. There would be beneficial economic impact through the collection of taxes, rentals, and royalties.
10. Overall environmental damage would be of short duration and insignificant in nature.





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